

EXHIBIT D

16 (CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

18 | CONTINUED DEPOSITION OF T. MARK JONES

Washington, D.C.

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VOLUME IV

1 inhalation, unit dose 0.083 percent, which is a
2 drug manufactured by Dey, but it does not say
3 whether or not Dey manufactured this particular
4 generic drug.

5 Do you know whether or not this drug
6 was manufactured by Dey that was the subject of
7 this claim?

8 A. I can't say that I do, because there's
9 no indication for it.

10 Q. Okay. Thank you.

11 Let's just quickly go over the
12 purchases that you do know of made by Ven-A-Care
13 in connection with litigation.

14 When was the first time Ven-A-Care made
15 such a purchase?

16 A. I want to say I believe it was around
17 the year 2000. We did some purchases through
18 ANDA, which is a gen -- you know, a generic
19 wholesale distributor, specialty distributor.

20 Q. Do you know which drugs were purchased?

21 A. I believe that it was Albuterol
22 Ipratropium, I think, I want to say Cromolyn.

1 Cromolyn. The inhalation drugs. And it may have
2 also been through JJ Balan as well.

3 Q. When you say Albuterol, does that
4 include the multidose, unit dose and inhaler?

5 A. It would probably be both or all three.

6 Q. Okay.

7 A. The .083 percent, the half percent, and
8 the multidose inhaler.

9 Q. Okay. Are there invoices for this 2000
10 purchase?

11 A. I think we've produced invoices for
12 them.

13 Q. So any invoices that exist would have
14 been produced?

15 A. Yes.

16 Q. I don't think I've seen the actual
17 invoice for --

18 A. You haven't.

19 Q. Maybe -- maybe you can point it out,
20 take a look --

21 A. Yeah.

22 Q. -- during a break. And those would

1 prices in the marketplace for Ipratropium, yes.

2 Q. Now, turning to Roxane 90, which is the
3 first filed qui tam complaint in this particular
4 litigation, the DOJ litigation, I wanted to focus
5 on the chart on the top of page 45.

6 A. Uh-huh.

7 Q. And in particular, in the third column
8 of that chart, there's an entry for relater's
9 cost for this particular NDC of Ipratropium
10 Bromide of 1295.

11 A. Uh-huh.

12 Q. Am I correct in assuming that that's
13 the price that Ven-A-Care believed was available
14 to it as of March 2000?

15 A. Yes.

16 Q. Do you know where that price comes
17 from, Mr. Jones?

18 A. Off the top of my head, no. It would
19 have come from one of our pricing sources, either
20 wholesale or distributor.

21 (Exhibit Roxane 196 was marked for
22 identification.)

1 BY MR. GORTNER:

2 Q. I'm handing you an exhibit marked
3 Roxane 196. It is a multipage exhibit that is
4 Bates labeled VAC MDL 59582 through 59590 in one
5 contiguous.

6 A. That's correct.

7 Q. And then at the end, it appears to have
8 appended VAC MDL 12256 and VAC MDL 38629. Do you
9 see that?

10 A. You lost me there.

11 Q. Oh. Maybe those last two documents
12 aren't --

13 A. Yeah.

14 Q. Okay. We're taking a look first at the
15 copies that you have. I wanted to focus your
16 attention on the page that's Bates labeled VAC
17 MDL 49586. And it appears to be an invoice from
18 a company called ANDA, A-N-D-A. Do you recognize
19 this document?

20 A. I recognize this, you know, that it's
21 an ANDA invoice with purchases on them, yes.

22 Q. And this is a document that Ven-A-Care

1 maintained in its ordinary course of business?

2 A. Yes.

3 Q. And it was produced in this litigation,
4 correct?

5 A. Yes.

6 Q. And looking at the order date, it has
7 an order date of 3-13-2000, so March 13th, 2000.
8 Do you see that?

9 A. Yes.

10 Q. And then looking across at the entry
11 for Ipratropium Bromide approximately halfway
12 into the item list.

13 A. With a 00054?

14 Q. Uh-huh. That appears to be Rox --

15 A. Yes.

16 Q. -- the same NDC number as in the top of
17 page 45 of Roxane 90. Do you see that?

18 A. Uh-huh.

19 Q. And it has a unit price there of 12.95?

20 A. That's correct.

21 Q. And that's the same unit price that
22 you've entered here on page 45 of Ven-A-Care's

1 first complaint?

2 A. Yes.

3 Q. Would that indicate to you that the
4 price that you quoted in that complaint on page
5 45 likely came from this order on March 2000 from
6 ANDA?

7 A. It certainly could have.

8 Q. You can't say with a certainty one way
9 or the other?

10 A. Well, I just want to make sure there
11 wasn't any other ones. I mean, that's the one I
12 would choose, yes, because of the date.

13 (Viewing documents.) I'm -- I'm
14 apt to agree with that, because I don't see
15 anything else that --

16 Q. Now, can you explain for the jury how
17 Ven-A-Care went about obtaining that particular
18 price for that NDC of Ipratropium Bromide, and
19 then actually purchasing the drug?

20 A. Well, generally, with this wholesaler,
21 they would have catalogs or they'd have fliers
22 that they'd send, you know, frequently updating.

1 Let's see who called. Sometimes it
2 tells you who did. You just pick up the phone
3 and go through the catalog and give them a
4 catalog number and order what you wanted, and
5 then they'd ship it to you.

6 Q. Now, in terms of ANDA, I just want the
7 jury or the judge to understand what ANDA is.
8 ANDA is a large generics wholesaler; isn't that
9 correct?

10 A. Yeah. I think they call themselves
11 specialty wholesalers, because they're a -- they
12 specialize, this one does, especially in
13 inhalation drugs. But yeah, they're wholesalers.

14 Q. Well, ANDA itself is one of the largest
15 distributors of generics in the United States,
16 isn't it?

17 A. Is it?

18 Q. I'm just asking.

19 A. I don't know.

20 Q. You don't know one way or the other?

21 A. No.

22 Q. But it wouldn't surprise you to know it

1 was one of the largest in the United States?

2 A. No, it wouldn't.

3 Q. Did you need -- and what I mean by
4 "you," Ven-A-Care.

5 A. Uh-huh.

6 Q. Did Ven-A-Care require any -- any
7 contractual agreement with ANDA to make this
8 purchase?

9 A. No.

10 Q. Did Ven-A-Care need to be a member of
11 ANDA or any affiliated group to make the
12 purchase?

13 A. Not that I'm aware of, no.

14 Q. Is it fair to say that -- that what was
15 required to make a purchase from ANDA Generics,
16 at this time, in March 2000, as far as you know,
17 was to be a licensed purchaser of pharmaceutical
18 products?

19 A. I want to say you have to be a licensed
20 pharmacy. You know, pharmacies are legally able
21 to purchase pharmaceuticals.

22 Q. And when say "pharmacy," this could

1 include any licensed retail pharmacy in the
2 country?

3 A. Yes.

4 Q. And it would include any long-term care
5 facility in the country?

6 MR. BREEN: Objection. Form.

7 THE WITNESS: I'm not sure. I mean,
8 long-term care facilities purchase medications.

9 I know that I've seen them --
10 especially like in GPO contracts, where they have
11 specialty pricing for them. As long as it has a
12 pharmaceutical license, I don't see why it
13 couldn't. I'm just -- I just don't.

14 BY MR. GORTNER:

15 Q. How about closed pharmacies like Ven-A-
16 Care? They could purchase.

17 A. Oh, sure. Yeah. Closed. Closed. Uh-
18 huh.

19 Q. How about hospital pharmacies?

20 MR. BREEN: Objection. Form.

21 THE WITNESS: Well, hospital pharmacies
22 can purchase from anyone that wants to sell to

1 them. That's for sure.

2 BY MR. GORTNER:

3 Q. So hospital pharmacies could purchase
4 from ANDA Generics this same product, correct?

5 A. Yes.

6 Q. And it was your view that this 12.95
7 price was -- was a widely-available price in the
8 marketplace?

9 A. Well, certainly if it's available
10 through ANDA -- and then I look -- if you look
11 back here. Let's see. There's a McKesson price
12 that's close in that same time frame.

13 Q. If you actually turn to VAC MDL 59589,
14 there's a slightly different McKesson price,
15 which we'll get to in a moment.

16 A. Maybe that's what I was thinking. And
17 that was, what, in March of '00? Okay. No.
18 Yes. I -- I believe it was available.
19 Certainly.

20 Q. Why don't we turn to the McKesson
21 invoice, which is on VAC MDL 59589. And that
22 appears to be an invoice from a couple weeks